89-164

NO.

Supreme Court, U.S.
FILED
JUL 20 1989
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1989

BO-MICK CONSTRUCTION CO., INC.

Petitioner

v.

MANSEL J. LAFLEUR

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF LOUISIANA

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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APPENDIX A

THE SUPREME COURT OF THE STATE OF LOUISIANA

MANSEL J. LAFLEUR

VS. NO. 89-C-0425

P & S WELL SERVICE NO. 5, INC. ET AL (BO-MICK CONSTRUCTION COMPANY, INC., ET ALS)

IN RE: BO-MICK CONSTRUCTION CO., INC., applying for Rehearing of this Court's Order of March 27, 1989; 4th Circuit Court of Appeal, No. 88CA-0686; 25th Judicial District Court, Div. A, Parish of Plaquemines, No. 28-208

April 21, 1989

Rehearing denied.

LFC

JAD

WFM

JLD

JCW

CALOGERO, J., would grant the rehearing.

Supreme Court of Louisiana
April 21, 1989

Frans J. LaBranche, Jr.
Clerk of Court
For the Court

APPENDIX B

THE SUPREME COURT OF THE STATE OF LOUISIANA

MANSEL J. LAFLEUR

VS. NO. 89-C - 0425

P & S WELL SERVICE NO. 5 INC. et al

- - - - - -

IN RE: LaFleur, Mansel J.; - Plaintiff(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fourth Circuit, Number 88CA-0686; Parish of Plaquemines 25th Judicial District Court Div."A" Number 28-208

- - - - - -

March 27, 1989

Granted. Summary judgment vacated. Case remanded to trial court for further proceedings.

JCW

JAD

WFM

LFC

CALOGERO, J., would grant and docket for argument.

Supreme Court of Louisiana
March 27, 1989

Frans J. LaBranche, Jr.
Clerk of Court
For the Court

APPENDIX C

MANSEL J. LAFLEUR

VERSUS

P & S WELL SERVICE
NO. 5, INC., ET AL

NO. 89-CA-0686

COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA

APPEAL FROM
TWENTY-FIFTH JUDICIAL DISTRICT
PARISH OF PLAQUEMINES
DIVISION A, NO. 28-208
HONORABLE MICHAEL E. KIRBY, JUDGE

STEVEN R. PLOTKIN
JUDGE

(Court composed of Chief Judge Patrick M. Schott and Judges Robert J. Klees, and Steven R. Plotkin

Plaintiff has appealed from a summary judgment denying his Jones Act claim. We affirm.

Plaintiff Mansel J. LaFleur was injured October 10, 1984, while working as a painter/sandblaster for defendant Bo-Mick Construction Company, Inc. (hereinafter Bo-Mick). He alleges his injuries occurred while he was stepping from a vessel, the L/B Gear Elevator, to the fixed platform on which his duties were performed. He brought suit based upon 46 U.S.C. 688 (the Jones Act) and General Maritime Laws of the United States, or, in the alternative, 33 U.S.C. 901 (the Longshoremen's and Harborworkers' Compensation Act), against Bo-Mick, his employer, P & S Well Service NO. 5, Inc., owner of the vessel; and Gulf Oil Company, Inc., platform owner. He later amended his petition to include

Liberty Mutual Insurance Co., Bo-Mick's insurer, and certain underwriters of Lloyds of London, Bo-Mick's excess coverage insurer. Bo-Mick and Lloyds of London filed motions for summary judgment.

On November 25, 1987, the parties agreed to submit the matter to the trial court on written briefs. On January 15, 1988, judgment was rendered dismissing plaintiff's Jones Act and General Maritime Law claims and reserving to plaintiff his claims under the Longshoremen's and Harborworkers' Compensation Act or Louisiana Worker's Compensation Act.

I.

Mansel J. LaFleur, who worked for Bo-Mick approximately six months prior to the accident, sandblasted and painted fixed platforms owned by Gulf Oil Company in Black Bay, in Plaquemines Parish,

Louisiana. The work did not require that LaFleur stay overnight on a vessel; each morning he met a crewboat which took him to the jack-up barge containing his sandblasting and painting equipment. The barge could move under its own power but it was slow and cumbersome; its primary function was to hold the compressor and sandblasting pots used in maintaining the platforms. When plaintiff left the crew boat and boarded the barge each morning, the barge traveled a short distance and positioned itself adjacent to the platform. The plaintiff's job required that he use an air hose from the barge on the platform and that he go back and forth between the barge and the platform many times a day.

On the day of the accident, the jack-up barge was positioned about four feet above the platform. In going from the

barge to the platform, plaintiff attempted to step onto a piling but slipped and fell to the platform and then into the water. Plaintiff alleges he suffered injuries that have prevented him from working since that time.

Plaintiff argues that summary judgment is rarely proper in Jones Act cases and that it is improper in this case because there is a reasonable evidentiary basis to support a finding that the plaintiff is a seaman.

II.

Under the Jones Act, "any seaman who shall suffer a personal injury in the course of his employment" has a right to claim damages in an action alleging that his employer was negligent. 46 U.S.C.A. section 688. This court recently reviewed the question of when a question of seaman

status could be resolved by summary judgment. In Fayard v. Contifleeting Inc., 511 So.2d 3, 4 (La. App. 4th Cir.), writ denied, 514 So.2d 461 (La. 1987), we noted:

> (w)hile summary judgment on seaman status in Jones Act is rarely proper, and even in marginal cases should go to the jury, it is in some circumstances possible to rule as a matter of law that a worker is not a seaman. Bouvier v. Krenz, 702 F.2d 89, at 90 (5th Cir. 1983), and cases cited therein; cf. Pizzitolo v. Electro-Cool Transfer Corp., 812 F.2d 977 (5th Cir.1987), where the appeals court affirmed the district court's decision on the issue as a matter of law in rendering a judgment notwithstanding the verdict.

As in Fayard, here the facts of the plaintiff's duties are not in dispute and the only issue is whether the facts meet the requirements for seaman status.

The test for seaman status was established in Offshore Company v.

Robison, 266 F.2d 769, 779 (5th Cir., 1959). The Robison court stated:

> there is an evidentiary basis for a Jones Act case to go to the jury: (1) if there is evidence that the injured workman was assigned permanently to a vessel ... or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips.

Recently the Robison test was reaffirmed in Barrett v. Chevron, U.S.A., Inc., 781 F.2d 1067 (5th Cir. 1986).

Applying the Robison test to the case at hand, we find that LaFleur did not satisfy the first element of the standard. LaFleur admitted in his deposition that all his work was done on fixed platforms and he had no duties on the barge. The fifth Circuit in Kirk v. Land & Marine

Applicators, Inc., 555 F.2d 481 (5th Cir. 1977), addressed the question of whether a sandblaster/painter working on a fixed platform was a seaman for Jones Act purposes. The court found that although the plaintiff had incidental ties to a support vessel (he lived aboard one), his principal duties as a sandblaster and painter were performed on the fixed platform and therefore he did not satisfy the first element of the Robison test. The plaintiff in Kirk had a stronger tie to a vessel than LaFleur because he ate, slept and did minor chores aboard it; LaFleur's only relationship with the vessel was that it provided him with transportation to the platform and storage space for his gear.

Moreover, recent cases have held that workers whose duties occur primarily on fixed platforms are not to be considered

seaman on the basis of their connection with vessels offering mainly support services for the platform. Longmire v. Sea Drilling Corp., 610 F.2d 1342 (5th Cir. 1980) (a roughneck assigned to a drilling platform who occasionally performed tasks on the support vessel was not a seaman even though he was injured while stowing the anchor chain); Billings v. Chevron, U.S.A., INC., 618 F.2d 1108 (5th Cir. 1980) (a roustabout on a fixed platform rig whose duties included loading and unloading tenders onto the platform was not a seaman); Golden v. Rowan Companies, Inc., 778 F.2d 1022 (5th Cir. 1985) (worker who maintained motors on a rig and performed various jobs of short duration on a vessel was denied seaman status); Miller v. Rowan Companies, Inc., 815 F.2d 1021 (5th Cir. 1987) (worker whose job entailed retrieving

drilling tools from a well and who lived aboard an adjacent vessel which served as bunkhouse for the crew was not a seaman).

Because plaintiff fails to meet the first element of the Robison test--that he was assigned permanently to a vessel or performed a substantial part of his work on a vessel--and therefore cannot be considered a seaman for purposes of the Jones Act, it is not necessary for us to examine the second element of Robison.

Accordingly, the judgment of the district court is affirmed.

AFFIRMED

APPENDIX D

TWENTY-FIFTH JUDICIAL DISTRICT COURT

PARISH OF PLAQUEMINES

STATE OF LOUISIANA

NO. 28-208 DIVISION "A"

MANSEL J. LAFLEUR

VS.

P & S WELL SERVICE #5, INC., ET AL

FILED: JAN 15, 1988 Candace Dufrene
DEPUTY CLERK

JUDGMENT ON MOTION FOR SUMMARY JUDGMENT

This matter was set for hearing on November 25, 1987. All parties agreed to submit the matter.

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of Robert Murray Collins and John Richard Ludbrooke Youell, as representative of

Certain Underwriters at Lloyd's London severally subscribing each for himself and not one for the other, to certain maritime employer's liability coverage, and against plaintiff Mansel J. LaFleur finding that said plaintiff is not a seaman within the meaning of the Jones Act or the General Maritime Law of the United States and dismissing those claims of plaintiff as to all defendants.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of defendant Bo-Mick Construction Company, Inc. and against plaintiff, Mansel J. LaFleur, dismissing the plaintiff's Jones Act and General Maritime Law claims as to Bo-Mick Construction Company, Inc., specifically reserving to plaintiff any claim he may have under the Longshoreman's

and Harbor Worker's Act, or the Louisiana Worker's Compensation Act, or both, if any.

JUDGMENT READ, RENDERED AND SIGNED at Pointe-ala-Hache, Louisiana this 15th day of January, 1988.

M. Kirby
J U D G E

APPENDIX E

Excerpts from Deposition of MANSEL J. LAFLEUR

Deposition of LaFleur - page 37

captain in jacking the barge up?

A. No.

Q. Did you ever assist in tying the barge up or untying the barge?

A. Huh-uh (negative response).

Q. You have to say yes or no.

A. No.

Q. Did you ever work on the engines on the barge?

A. No.

Q. Did you ever clean or paint the barge?

A. No.

Q. Did you ever do any work on the barge, other than work on Bo-Mick's equipment that would be on the barge? In

other words, did you ever do any mechanic's work on the barge or help the captain with anything?

A. No.

Q. Did you every drive the barge, steer the barge anywhere?

A. No.

Q. I suppose you would take your lunch on the barge during the day?

Deposition of LaFleur - page 43

Q. Are the structures pretty close together out there?

A. Yeah, they're not far apart.

Q. And the work on all of these was sandblasting and then painting; is that correct?

A. Yes.

Q. Now, as far as the crewboat ride, you didn't have to drive the crewboat at all, did you.

A. No, sir.

Q. Now, the sandblasting and painting work that you did on the structures during the time you worked for Bo-Mick in the Black Bay field, did you ever have to work on the barge itself, stand on the barge itself to do the work on the platform, or did you get off of the barge to do your work?

A. Most of the time you just -- you don't work on the barge. You have to paint on the platform. I don't remember ever working off of the barge to get to nothing.

Q. Now, when you got to a

small two-gallon paint pot. We had to take them on the platform with us.

Q. As far as the sandblasting is concerned, the sandblast pots and the compressor would remain on the barge?

A. Yes, sir.

Q. And I suppose there would be rubber hoses that went across to the platform, to the guns themselves?

A. Right.

Q. Did the helper ever do any sandblasting or painting?

A. No.

Q. Was his job just to keep the pots filled and make sure the equipment was running?

A. Yes, sir. He shoveled sand, he tailed our paint lines, helped us tape gauges and stuff, and then when we sandblasted, he had to run the pot on the barge.

Q. So he would make sure the pot was full of sand?

A. Yeah, fill it up and turn it on and off.

Deposition of LaFleur - page 47

Q. When did you do that? That's something you had a regular time every day that you would do it?

A. When sandblasting, we usually stop a couple of hours before knock-off time to blow it down. We blow it down with the hose as much as we could.

Q. By blowing it down, you mean the structure you just got done sandblasting?

A. Yes, so we could paint it. And sometimes if it was too heavy, we had to shovel it off of there. We done that every day. But we both done it. I helped him do it.

Q. What about the sand that got on the barge during the operation? I'm sure some sand must have blown on the barge. Who cleaned that?

A. The skipper, as far as I know, he would wash it. I mean I don't know. I never did clean it.

Q. All right. Now, at the time of the accident or the day of the accident, do you know the name or the number of the

A. She's married to him, yes.

MR. WARD:

Thank you very much, Mr. LaFleur.

EXAMINATION BY MR SACKS:

Q. I have just a few questions for you, please. Did you state that you had been working for Bo-Mick approximately six months by the time you had this injury?

A. Yes.

Q. All right. And during that six months, can you give me a general

description of the kind of work you were doing there?

A. Sandblast and paint.

Q. Was all the sandblasting and painting you did in connection with oil field type projects?

A. Yes, sir.

Q. Was the work that you did only for Gulf or was there work for other oil companies, as well?

A. As far as I can remember, it was for Gulf, Gulf Oil.

Deposition of LaFleur - page 130

Q. And did it consist mostly of painting and sandblasting offshore production facilities?

A. Yes.

Q. How did you learn of where you had to go or what particular platforms had to be painted?

A. Them boat captains knows the name of them platforms and how to get to them, and that's how we -- I mean I'm not navigator.

Q. Where would you report in the mornings, generally speaking? Would you go to the Bo-Mick office every morning?

A. No, sir, we would go to the boat docks in Buras where they dock their crewboats and catch our boat there every morning, and it let us back down that night.

Q. I'm a little confused about the situation or the structure and the barge. Now, you suggested that the little porch was about five steps or so below the main deck of the platform; is that correct?

APPENDIX F

Excerpts from Deposition of CAPTAIN CREEL

Deposition of Creel - page 8

or could you describe that for me?

A. Sometimes we'd come in, and sometimes we'd stay out. It's just according to how the weather was.

Q. You had quarters, sleeping quarters, on the --

A. No. We come home every night with a crew boat.

Q. There are no facilities on that barge to sleep?

A. No, sir.

Q. What about a galley? Does it have that?

A. No. It don't have anything. Just a little house on it.

Q. You say at the present time this barge is being used for welding support?

A. Right now. We've got a welder on there working for Chevron out there right now.

Q. Does the barge have a name?

A. Yes. GEAR ELEVATOR.

Q. Is that like a gear on a car?

A. GEAR ELEVATOR.

Q. Is that on the bow of the barge or

particular platform was from the headquarters?

A. I guess a couple of thousand yards, I imagine.

Q. How did you get back and forth to work each day?

A. Well, sometimes on my barge and

sometimes a crew boat would pick us up if I had to leave my barge on location.

Q. Did you go back and forth on this jack-up barge to work?

A. Well, at times, yeah, if I didn't leave it on location.

Q. Was your normal routine to leave it on location until you completed a job?

A. No. It was left up to us, if we wanted to leave it there or take it in.

Q. Well, at the time Mr. LaFleur was working there, did ya'll normally leave it on the platform site at night?

A. No, not particularly.

Q. Could you give me an idea, say, in the previous -- the week prior to this accident how many times you may have

Q. Yes. That particular platform that you were working on.

A. About two or three minutes from the barge. Maybe four. Something like that.

Q. And would Mr. LaFleur ride on the GEAR ELEVATOR during that trip?

A. Right.

Q. Did he assist you in positioning the GEAR ELEVATOR next to the platform?

A. No, sir. He never did assist me in nothing.

Q. That would be your docking maneuvers yourself?

A. Right.

Q. And there is no need to tie off or anything, you just start spudding down?

A. That's right.

Q. What would he do during that period when you were traveling from the wirehouse to the platform?

A. Oh, he would set in the cabin with me then and maybe stand outside, you know.

Deposition of Creel - page 57

A. Right.

Q. And with Bo-Mick?

A. Right.

Q. Did Mr. LaFleur or his helper ever assist you in any of the operation of the barge?

A. No, sir. Never did.

Q. To your knowledge, is the only work that they were involved in was the painting and sandblasting of the platform?

A. Right.

MR. SACKS:

That's all I have.

Thank you.

BY MR. WRIGHT:

Q. What is your source of information about the GEAR ELEVATOR working for Gulf and then getting laid off? How do you know about that?

A. Well, they run out of work for us out there.

Q. But how do you know that; from Mr. Ritchie?

A. Right. Well, they tell me. They tell

APPENDIX G

Excerpts from Deposition of Donald Michael Dean

Deposition of Dean - page 17

A. No.

Q. Did you ever see him paint or chip on the crewboat?

A. No.

Q. Did you ever see him do anything else regarding the crewboat except ride on it?

A. On the crewboat?

Q. Yes.

A. No.

Q. When you got to the warehouse, I believe you said that was where the crewboat took you?

A. That's correct.

Q. Describe the warehouse, if you would.

A. It's just a big tin building on four legs out in the water.

Q. Were these legs apparently sticking down into the bed of the water?

A. It is a little piece of land there. And it's got a little like dock running around it where all the boats park around it and all the other barges and work barges and stuff.

Deposition of Dean - page 20

platform on that jack-up barge?

A. Right.

Q. And did either you or Mr. Lafleur operate the barge?

A. No.

Q. Did you untie the barge at the dock, at the warehouse?

A. No.

Q. Did either of you tie it on when you got to the platform where you were going to work?

A. No. We don't tie them on.

Q. Well, did either you or Mr. Lafleur have anything to do with either the movement of the barge or its positioning by the platform?

A. No.

Q. Did Mr. Lafleur have anything to do with any painting of any part of the lift barge?

A. No.

Q. Any chipping?

A. No.

Q. Did you ever see him do anything to any of the structural members

Deposition of Dean - page 21

of that barge while you worked with him?

A. No.

Q. Did you do any such thing?

A. No.

Q. Where did the jack-up barge position itself when it got to this platform you

previously described where you were working?

A. I'm not too sure because I don't know the directions. I believe it was on the south side of the platform.

Q. By what, if anything, did it position itself?

A. The grating walkway there.

Q. About how high off the water level was the grating walkway?

A. About four foot.

Q. Now, other than the three days of work shown by the tickets Dean 1, 2 and 3, do you recall ever working with Mr. Lafleur on any other occasion?

A. No, not besides one time he was running a cherry picker down when we was putting the tanks in, but I didn't work around him. I didn't have nothing to